

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THE HONORABLE ANDREW P. GORDON, U.S. DISTRICT JUDGE PRESIDING

4
5 UNITED STATES OF AMERICA,)

6 Plaintiff,)

7 vs.)

8 STEVEN M. UNDERHILL,)

9 Defendant,)

CASE NO.:
2:12-cr-301-APG-CWH

C E R T I F I E D C O P Y

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12 REPORTER'S TRANSCRIPT OF CHANGE OF PLEA HEARING

13 Friday, June 14, 2013

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15 APPEARANCES:

16 FOR THE PLAINTIFF:

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19 FOR THE DEFENDANT:

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25 HEATHER K. NEWMAN, CCR 774
Official Federal Reporter

1 LAS VEGAS, NEVADA; FRIDAY, JUNE 14, 2013; AT 11:05 A.M.

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3 P R O C E E D I N G S

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5 THE CLERK: All rise.

6 THE COURT: Thank you. Good morning. Please be
7 seated.

8 THE CLERK: United States of America vs. Steven M.
9 Underhill, 2:12-cr-301-APG-CWH. This is the time set for
10 change of plea in this matter.

11 Counsel, please note your appearances for the record.

12 MS. NEWMAN: Good morning, Your Honor. Kathryn Newman
13 on behalf of the United States. I have with me at counsel
14 table Special Agent Lisa DeMaria of GSA-OIG.

15 THE COURT: Good morning to both of you.

16 MR. CARRICO: Good morning, Your Honor.
17 William Carrico representing Steven Underhill. He is seated
18 just to my right.

19 THE COURT: Good morning, Mr. Carrico.

20 Good morning, Mr. Underhill.

21 I understand the defendant has entered into a
22 non-binding Plea Agreement and intends to plead guilty to three
23 counts in the Indictment charging defendant with two counts of
24 making False Statements and one count of Witness Tampering.
25 Whether I accept that guilty plea will depend on the outcome of

1 this hearing. I've got some questions I want to ask you,
2 Mr. Underhill, so I'll ask you to stand and be sworn in.

3 THE CLERK: Please raise your right hand.

4 Do you solemnly swear that the testimony you shall
5 give in the cause now pending before this Court shall be the
6 truth, the whole truth, and nothing but the truth, so help you
7 God?

8 THE DEFENDANT: Yes.

9 THE CLERK: Thank you.

10 THE COURT: You can be seated. Just make sure we get
11 your voice on the microphone there so our court reporter can
12 pick it up.

13 THE DEFENDANT: Okay.

14 THE COURT: Mr. Underhill, I want to ask you some
15 questions regarding your Plea Agreement. I want to make sure
16 that, a), you're competent to enter into this agreement -- not
17 to suggest that you're not or not to disparage you in any way,
18 it's just a legal technicality -- I want to make sure that
19 you're competent and able to enter into this, and I also want
20 to make sure that the Plea Agreement that you're entering into
21 is a knowing and voluntary Plea Agreement.

22 If you at any time don't understand any of the
23 questions I ask you or if you want to confer with your counsel,
24 just say so and you'll have the opportunity to do so away from
25 the microphones and we won't pick you up in that regard.

1 At the same time, if you don't understand any
2 question, or need me to clarify or rephrase it or, sometimes I
3 have a tendency to speak real fast, just tell me and I'll slow
4 down and see if we can get us back oriented.

5 Do you understand that you just took an oath to tell
6 the truth?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand that if you answer
9 any of my questions falsely or don't provide truthful answers
10 to my questions, that you could be prosecuted later for perjury
11 or, again, making False Statements? Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How old are you?

14 THE DEFENDANT: 57.

15 THE COURT: And how far did you go in school?

16 THE DEFENDANT: 12th grade.

17 THE COURT: My understanding is that you've had
18 several years worth of work experience in the business world
19 doing property management and things like that?

20 THE DEFENDANT: Yes. I've been to a lot of
21 vocational schools and hands-on schools for, like, AC equipment
22 repair and stuff like that.

23 THE COURT: Okay. And then with regard to employment
24 you've had, you've held a number of positions in property
25 management and things like that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You've worked with contracts and legal
3 agreements?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. I presume, but I'll ask just to
6 make sure, do you have any problems speaking, understanding,
7 reading or writing the English language?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you taken any drugs, any medicine,
10 any pills of any kind in the last 24 hours?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you had any alcohol in the last 24
13 hours?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you been treated recently for any
16 mental illness, any drug or alcohol addiction?

17 THE DEFENDANT: No, sir.

18 THE COURT: I'll ask counsel for the Government and
19 counsel for defense, do either of you have any doubt as to the
20 defendant's capacity to enter into a guilty plea today?

21 MS. NEWMAN: No, Your Honor.

22 MR. CARRICO: I do not, Your Honor.

23 THE COURT: Thank you.

24 Based upon counsel's representations and the
25 defendant's answers to my questions and my observations of his

1 demeanor here in court, I find that the defendant is competent
2 to enter into a plea in this matter.

3 Mr. Underhill, have you had sufficient time to
4 consult with your attorney to be fully prepared to enter a
5 guilty plea today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has your attorney fully informed you
8 about the charges against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has he fully informed you about your
11 Plea Agreement and the consequences of your proposed guilty
12 plea?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he, your attorney, been able to
15 answer all of the questions you've had for him?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you fully satisfied with your
18 attorney's representation of you in this matter?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Carrico, have you provided your
21 client a copy of the Indictment?

22 MR. CARRICO: I have, Your Honor.

23 THE COURT: And Mr. Underhill, just to confirm for
24 the record, have you been furnished with a copy of the
25 Indictment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And have you read the Indictment?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Were you able to consult with your
5 counsel about the Indictment?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Carrico, does your client waive
8 reading of the Indictment?

9 MR. CARRICO: It is so waived, yes, Your Honor.

10 THE COURT: Thank you.

11 Mr. Underhill, in the Indictment you're charged with
12 two counts of making False Statements and one count of Witness
13 Tampering. In summary, the Indictment alleges that on two
14 occasions you knowingly and willfully made material false
15 statements to special agents of the Office of Inspector General
16 of the GSA. The Indictment also alleges you knowingly
17 attempted to intimidate, threaten and corruptly persuade a
18 witness in a federal investigation with the intent to hinder,
19 delay and prevent the communication of information relating to
20 a federal offense.

21 And you've agreed to plead guilty to all three of
22 these charges.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Those charges have certain essential
25 elements that the Government has to prove.

1 With regard to the first two counts, that is the
2 elements of False Statement, the elements are: That the
3 defendant made a False Statement in a matter within the
4 jurisdiction of an agency or department of the United States;
5 that the defendant acted willfully, that is, deliberately and
6 with knowledge that the statement was untrue; and, that the
7 statement was material to the activities or decisions of the
8 agency or department, that is, it had a natural tendency to
9 influence, or was capable of influencing, the agency's
10 decisions or activities.

11 With regard to the charge of Witness Tampering, the
12 elements of that offense are that the defendant threatened or
13 attempted to corruptly persuade a person; that the defendant
14 was motivated by a desire to prevent the communication between
15 that person and law enforcement authorities concerning the
16 commission or possible commission of an offense; the offense
17 was actually a federal offense; and the defendant believed that
18 the person he was attempting to corruptly persuade might
19 communicate with federal authorities.

20 Mr. Underhill, do you understand that if you went to
21 trial, the Government would have to prove beyond a reasonable
22 doubt each one of those essential elements before you could be
23 convicted for those offenses?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And do you understand that by entering

1 into a guilty plea to these charges that you will be admitting
2 that each one of the essential elements is true as they apply
3 to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Carrico, have you explained the
6 essential elements to your client?

7 MR. CARRICO: I have.

8 THE COURT: Are you fully satisfied that he
9 understands them?

10 MR. CARRICO: I am completely satisfied, Your Honor.

11 THE COURT: Thank you.

12 Mr. Underhill, I want to make sure you understand the
13 rights that you're giving up by pleading guilty, particularly
14 with regard to the Jury Trial.

15 And do you understand that you are entitled to plead
16 not guilty and to have a speedy and a public Jury Trial in this
17 courthouse?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you understand that at trial, you
20 would have the right to the assistance of your attorney at the
21 trial and at all stages of the proceedings against you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that at trial, you
24 would be presumed innocent and before you could be convicted,
25 the Government would have to overcome that presumption of

1 innocence and prove to the jury that you're guilty beyond a
2 reasonable doubt?

3 Do you understand you have those rights?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you understand that in order for
6 you to be convicted at trial, all of the jurors would have to
7 agree that you're guilty beyond a reasonable doubt?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that at trial, the
10 witnesses for the Government would have to come to court and
11 testify in your presence, and your attorney could cross-examine
12 those witnesses and could object to any evidence he found
13 objectionable?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand that your attorney
16 would, at trial, have the right to offer evidence on your
17 behalf, and that would include the right to subpoena and call
18 witnesses to come in and testify in your behalf?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand that at trial, you
21 would have the right to testify if you chose to do so. You
22 also would have the right to remain silent and not offer any
23 evidence if you chose to do so?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And do you understand that if you decided

1 not to testify and decided not to put on any evidence, that
2 those facts could not be used against you at trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand that if you were
5 tried by a jury and found guilty, you would have the right to
6 appeal that verdict to a higher court?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you fully understand that if you
9 plead guilty and the Court accepts your guilty plea, that
10 you'll be waiving all of these Jury Trial rights and appeal
11 rights that we've just discussed?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that if you plead
14 guilty to these three charges and the Court accepts your guilty
15 pleas, that you can be sentenced to prison for up to 5 years
16 for each of Counts One and Two and up to 20 years in prison for
17 Count Three?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you understand that a federal
20 prison sentence cannot be shortened by parole?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand that in addition to
23 giving you a prison sentence, the Court can impose a fine upon
24 you of up to \$250,000 for each count?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that after
2 completing your term in prison, you may be required to serve a
3 term of supervised release of up to 3 years?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you understand that there would be
6 terms and conditions attached to that supervised release and
7 that if you violated any of those terms and conditions, your
8 release could be revoked?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And do you understand if your release is
11 revoked, you may be sent back to prison, incarcerated again,
12 and the term of that incarceration may actually be longer than
13 the term of imprisonment for the underlying offense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand that you may not
16 get credit for good time served while on supervised release?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you also understand that a special
19 assessment of \$300, that is \$100 per count, would have to be
20 applied?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I presume you're a United States citizen
23 but in the event you're not, if you are not a United States
24 citizen, do you understand that you may be deported upon
25 completion of your prison sentence and that you will not be

1 able to return to the United States?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand that you may be
4 required to surrender assets you obtained, directly or
5 indirectly, as a result of the offenses for which you're
6 pleading guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand that in your
9 Plea Agreement you also agreed to make full restitution in an
10 amount to be determined by the Court?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you understand that the Court will
13 require you to provide accurate and complete financial
14 information?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Let me just check with counsel. I saw a
17 provision in the Plea Agreement regarding surrendering of
18 assets but not a separate forfeiture provision, per se. Is
19 there any forfeiture allegation or request?

20 MS. NEWMAN: There are not.

21 MR. CARRICO: There are none.

22 THE COURT: Okay. Thank you.

23 Mr. Underhill, with regard to the Plea Agreement you
24 signed, did you have an opportunity to read and fully discuss
25 that agreement with your attorney before you signed it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And did your attorney fully explain the
3 Plea Agreement to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I want you to pay very close attention
6 and I'm going to ask the assistant United States attorney to
7 give us a summary of the terms of the Plea Agreement. And when
8 she's done, I'm going to ask you and your counsel if her
9 summary of that agreement is a hundred percent accurate with
10 your understanding of the Plea Agreement.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay?

13 All right.

14 MS. NEWMAN: Thank you, Your Honor.

15 The -- as you mentioned earlier, the plea is
16 non-binding on this Court.

17 The defendant agreed to plead guilty to three counts
18 as set forth in the Indictment.

19 THE COURT: My recollection is those are the only
20 three counts in the Indictment.

21 MS. NEWMAN: The only three counts, yes, Your Honor.

22 The parties have calculated the guidelines as
23 follows:

24 The base offense is a 14. There is an additional one
25 level for grouping and a reduction -- a three-level reduction

1 for an Adjusted Offense Level of 12.

2 The -- there is a reduction for the offense level --
3 reduction of offense level for acceptance of responsibility and
4 the Government will recommend that he receive a two-level
5 downward adjustment for acceptance of responsibility unless he
6 fails to truthfully admit facts establishing a factual basis
7 for the guilty plea when he enters the plea; fails to
8 truthfully admit facts establishing the amount of restitution
9 owed when he enters his guilty plea -- here, I believe there is
10 no restitution sought -- he fails to truthfully admit facts
11 establishing the forfeiture allegations when he enters the
12 guilty plea; provides false or misleading information to the
13 United States, the Court, Pretrial Services or the Probation
14 Office; denies involvement in the offense; or provides
15 conflicting statements regarding his involvement; or falsely
16 denies or frivolously contests conduct relevant to the offense;
17 attempts to withdraw his guilty plea; commits or attempts to
18 commit any crime; fails to appear in court; or violates the
19 conditions of pretrial release.

20 In addition, the United States will move for an
21 additional one level of downward adjustment for acceptance of
22 responsibility before sentencing because he's communicated his
23 decision to plead guilty in a timely manner.

24 Slow down? Thanks.

25 THE COURT: Just a little, so we catch up with our

1 reporter. Thank you.

2 MS. NEWMAN: All right.

3 The criminal history will be determined by the Court
4 based in part on the Pre-Sentence Report.

5 The United States will recommend that the Court
6 sentence the defendant to a 5-year term of probation with a
7 special condition that he have no contact with the victim or
8 her family, unless the defendant commits any act which could
9 result in the loss of a downward adjustment for acceptance of
10 responsibility.

11 The defendant may argue that the Court should
12 sentence the defendant to a shorter term of probation under
13 18 U.S.C. 3553.

14 The parties have come to no agreement regarding fine.
15 And the parties are free to argue their position at sentencing.

16 I stand corrected. There is a restitution provision
17 within the Plea Agreement. In exchange for the benefits
18 received under the Plea Agreement, he agrees to make full
19 restitution in an amount to be determined by the Court.

20 And finally, there's a waiver of appeal and
21 post-conviction proceedings found on Page 11. I will not read
22 it in full but I will mention it.

23 And, Your Honor, I believe those are all the relevant
24 portions of the Plea Agreement. Are there any other areas
25 you'd like me to cover?

1 THE COURT: Let me ask you a question with regard to
2 Page 6 of the Plea Agreement, the offense level calculations.
3 I'm not seeing a calculation with regard to the first two
4 counts.

5 MS. NEWMAN: Your Honor, there's a grouping.

6 THE COURT: That's right.

7 MS. NEWMAN: That's -- so that's what's happening.

8 THE COURT: I apologize. You're right. You did
9 state that. Thank you.

10 MS. NEWMAN: And while we're on this and I anticipate
11 that Pretrial Services will point this out, apparently I am bad
12 at math because the third point only comes into play when
13 you're at a level 16 or higher. The Government stands by its
14 calculation here, the calculation it agreed to, which is a 12,
15 although we anticipate that -- looking at it just now, I
16 anticipate Pretrial will come back with a 13 but the Government
17 will, again, recommend a 12 since that is its agreement.

18 (Brief pause in proceedings.)

19 THE COURT: Mr. Carrico, does Ms. Newman's summary of
20 the Plea Agreement comply with your understanding of the
21 agreement?

22 MR. CARRICO: It does, yes, Your Honor.

23 THE COURT: Thank you.

24 Mr. Underhill, does Ms. Newman's summary of the
25 Plea Agreement comply with your understanding of the

1 Plea Agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that the Plea Agreement
4 is not binding upon the Court and that it's only a
5 recommendation, and that the Court can reject that
6 recommendation without permitting you to withdraw your guilty
7 plea?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that if the Court
10 imposes a sentence that is more severe than you anticipate,
11 that does not give you the right to withdraw your guilty plea?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Ms. Newman mentioned that your
14 Plea Agreement includes the waiver of certain appeal rights. I
15 want to cover those again with you and make sure you're still
16 in agreement.

17 In the Plea Agreement you knowingly and expressly
18 waive the right to appeal any sentence imposed that's within or
19 below the applicable sentencing guidelines as determined by the
20 Court; you knowingly and expressly waive the right to appeal
21 the manner in which the Court determined that sentence on the
22 grounds set forth in 18 U.S.C. Section 3742; and you knowingly
23 and expressly waive the right to appeal any other aspect of the
24 conviction or sentence and any order of restitution or
25 forfeiture.

1 Do you understand that you have those rights of
2 appeal?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And are you knowingly and voluntarily
5 waiving those rights of appeal?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that your only right of
8 appeal would be if the sentence, which the Court renders, is
9 longer than the high end of the sentencing guideline, which
10 will be determined by the Court?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you understand that by entering
13 into the Plea Agreement, you're also waiving what we call
14 collateral challenges, to your conviction, to your sentence,
15 and to the procedure by which the Court adjudicated guilt and
16 imposed the sentence, including claims under 28 U.S.C. 2255,
17 except that you would retain the right to challenge for a claim
18 of ineffective assistance of counsel? Do you understand all
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any question about the
22 meaning of anything in the Plea Agreement?

23 THE DEFENDANT: I can't think of anything,
24 Your Honor.

25 THE COURT: And do you fully understand all the terms

1 of the Plea Agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone made any promises to you other
4 than what's set forth in the Plea Agreement?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Does the Plea Agreement represent the
7 entire understanding, the entire agreement you have with the
8 Government?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did anyone -- I'm sorry.

11 And did you knowingly and voluntarily make that Plea
12 Agreement with the Government?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Ms. Newman, has the Government made any
15 prior plea offers that are more favorable to this defendant?

16 MS. NEWMAN: No, Your Honor. There was a prior plea
17 offer but it was less favorable.

18 THE COURT: Do you agree with that, Mr. Carrico?

19 MR. CARRICO: Yes. Matter of degree but, that's
20 quite accurate, Your Honor.

21 THE COURT: Mr. Underhill, were you aware that a
22 prior plea offer had been made?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And did you discuss that with your
25 attorney -- without giving me any details, did you discuss it

1 with your attorney?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And was your attorney able to answer all
4 your questions about that prior plea offer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: With regard to sentencing in this case,
7 has anybody made any promise to you as to what sentence the
8 Court will impose?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has your attorney explained to you about
11 the sentencing guidelines and how he believes they may affect
12 your sentencing?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you understand that in deciding
15 your sentence, the Court will consider those sentencing
16 guidelines that have been established by the law?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand that those
19 guidelines are only advisory, and the Court is not bound to
20 follow those?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand that the Court
23 could impose a sentence upon you which is above or below the
24 sentencing guidelines?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that regardless of
2 what your Plea Agreement provides, regardless of what the
3 attorneys argue, recommend or request, it's up to the Court to
4 decide what sentence you will receive?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand that the Court will
7 not be able to determine that sentencing range under the
8 guidelines until after the Probation Office conducts an
9 investigation and issues a report?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand that after that
12 process is over, the guidelines may have changed and the range
13 that's applicable to you may be different from the estimate
14 that your attorney has given you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand if that's the case
17 and the guideline ranges have changed, that would not give you
18 the right to withdraw your guilty plea? Do you understand
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you understand that if the Court
22 gives you the maximum prison sentence of 20 years on the second
23 count -- on the third count and 5 years on each of the two
24 first counts, that would not give you the right to withdraw
25 your plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you understand that the Court, in
3 determining the sentence, can take into account any relevant
4 conduct by you, regardless of this case or prior history?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In your Plea Agreement, at Pages 4
7 through 6, you admit a number of facts that underlie the guilty
8 plea. I'm not going to read them verbatim but I want to
9 summarize and make sure that you still agree with that.

10 Specifically, in your Plea Agreement you admit that
11 in or about 2010, the GSA, a federal agency, initiated an
12 investigation into alleged improprieties in the contract award
13 for janitorial services in the Lloyd George courthouse. The
14 allegations included claims that you, who at the time were a
15 GSA assistant property manager responsible for overseeing the
16 courthouse, had an disclosed and improper relationship with
17 someone, initials L.V., who was an employee of Tried and True
18 Corporate Cleaning.

19 The GSA was investigating specific claims, that as a
20 result of the Tried and True's employee's decision to end the
21 relationship with you, you began giving Tried and True
22 unsatisfactory ratings which negatively impacted its bid to
23 renew its contract for janitorial services here at the
24 courthouse. GSA was also investigating claims that you had
25 received financial payments and other benefits from contractors

1 working for GSA.

2 As part of GSA's investigation, Special Agent
3 Lisa DeMaria, Scott Mumper and Michael Ramos and Officer Steve
4 Novier of the Metropolitan Police Department interviewed you on
5 April 7th, 2011. These agents asked you about your
6 relationship with L.V. and you replied that you never had a
7 relationship with L.V.

8 As further part of the investigation, the special
9 agents interviewed you again on May 26th, 2011. They asked if
10 you had lived with L.V. and once again, you denied having a
11 relationship with L.V. and said that you never lived with her.

12 You also lied when you said that you had not been in
13 a relationship or lived with -- I'm sorry. You also lied when
14 you said you had not been in a relationship or lived with L.V.
15 In truth, you had been in a relationship with L.V. from
16 approximately 2005 through 2007. During the relationship, you
17 moved into L.V.'s house and lived with her and her mother. You
18 and L.V. took steps to conceal the relationship because you
19 knew it to be improper.

20 You contacted L.V. prior to your April 7th, 2011,
21 interview with the special agents and you told her that if the
22 agents found out about your relationship with L.V., you would
23 be fired. You told L.V. to deny everything to the special
24 agents.

25 On May 11th, 2011, you spoke to L.V. by telephone.

1 During that call you repeatedly told her to "stick to the
2 story" and denied that you had a romantic relationship -- I'm
3 sorry, and to deny that you had a romantic relationship if you
4 were asked by GSA. You said "they have no proof" and you also
5 directed L.V. to tell them that you weren't living together.

6 You continued to contact L.V. by phone and by text
7 message over the next 14 months. Messages included threats of
8 retaliation and public embarrassment if she cooperated with the
9 GSA's investigation. In total, you sent her over 400 text
10 messages within a year.

11 On July 17th you contacted GSA Special Agent
12 Lisa DeMaria and asked her the status of the investigation and
13 whether you would be fired as a result of their findings.
14 Ms. DeMaria declined to provide the information. You then
15 clarified that there was an early retirement program available
16 and that you would retire early if there was a possibility that
17 you would be fired as a result of the investigation. The agent
18 replied that firing was a possible outcome if the investigation
19 uncovered wrongdoing on your part.

20 You submitted your paperwork for early retirement on
21 July 24th, 2012. As a result, you were qualified for a 25,000
22 dollar one-time payment in addition to all the retirement
23 benefits as a Voluntary Separation Incentive Payment from the
24 Voluntary Early Retirement Authority.

25 Those are the facts set forth in your Plea Agreement

1 that you signed.

2 Are those facts true?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Does that accurately describe what you
5 actually did relative to the charge against you?

6 (Discussion between defendant and counsel.)

7 MR. CARRICO: One moment, Your Honor.

8 THE COURT: Yes, go ahead.

9 (Discussion between defendant and counsel.)

10 THE DEFENDANT: Umm, Your Honor, they looked at the
11 bad marks but, I was told to give them the bad marks by my
12 boss. Umm, that's why they received the bad marks.

13 THE COURT: That's why who received the bad marks?

14 MR. CARRICO: Tried and True Cleaning.

15 THE DEFENDANT: Tried and True.

16 I was doing what my boss told me to do.

17 THE COURT: I'll ask the Government, with that
18 clarification or modification, is the Government satisfied with
19 the factual basis for the plea of guilty provided in this case
20 by the defendant?

21 MS. NEWMAN: Yes, Your Honor.

22 THE COURT: Okay.

23 So then let me reask the question slightly. As
24 you've just clarified or modified, does that accurately
25 describe what you actually did relative to the charge against

1 you?

2 THE DEFENDANT: Yes. Yes, Your Honor.

3 THE COURT: Has anyone threatened you in order to get
4 you to enter a plea of guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Is anyone forcing you in any way to enter
7 a plea of guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anyone said to you if you do not
10 plead guilty, further charges will be brought against you or
11 some other adverse action will be taken against you?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you understand all of the possible
14 punishment consequences of your plea of guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is there any remaining question that you
17 would like to ask your attorney about privately before you
18 plead guilty to the charges against you?

19 THE DEFENDANT: I can't think of any.

20 THE COURT: Okay. Then with regard to Counts One and
21 Two of the Indictment charging you with making False
22 Statements, how do you plead to those two charges?

23 THE DEFENDANT: Guilty.

24 THE COURT: And with regard to Count Three of the
25 Indictment charging you with Witness Tampering, how do you

1 plead to that charge?

2 THE DEFENDANT: Guilty.

3 THE COURT: And are you pleading guilty to those
4 charges because in truth and in fact you are guilty to these
5 charges and for no other reason?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It's the finding of the Court that the
8 defendant is fully competent and capable of entering into
9 informed pleas; that the defendant is aware of the nature of
10 the charges and the consequences of his guilty pleas; and that
11 his pleas of guilty are knowing and voluntary pleas supported
12 by an independent factual basis containing each one of the
13 essential elements of the offense. The defendant's pleas are
14 therefore accepted and the defendant is now adjudicated guilty
15 of each of those three offenses.

16 Mr. Underhill, the Court will now order that a
17 Pre-Sentence Investigation and Report be prepared by the
18 Probation Office. Once that reported is completed, your
19 counsel will be provided a copy. You'll have an opportunity to
20 confer with your counsel about that report. I strongly
21 encourage you to do so and let me know -- let your attorney
22 know if there are any errors in the report.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If there are any, he can then raise them
25 with the Probation Office and get those clarified to the extent

1 they can be. I want you to do that because I'll be provided a
2 copy of the report after it's completed and I will look to that
3 and rely upon that in part when I impose sentence or when the
4 Court, whoever judge, whichever judge has the case at that
5 point, imposes sentence, so it's important that that report be
6 as accurate as possible.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: At the time of sentencing, your counsel
10 will be able to speak to the Court on your behalf and you will
11 have the opportunity to address the Court on your behalf, if
12 you so choose to.

13 Do you understand all that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. The matter is now referred to the
16 United States Probation Office for a Pre-Sentence Investigation
17 and Report and I'll ask our courtroom administrator for a date
18 and time for sentencing.

19 THE CLERK: Sentencing will be held on Thursday,
20 September the 12th at 9:00 a.m.

21 THE COURT: Thank you.

22 Is there anything further either counsel would like
23 to address to the Court at this point?

24 MR. CARRICO: Nothing on behalf of Mr. Underhill,
25 Your Honor.

1 MS. NEWMAN: And just briefly. The defendant was --
2 has been on pretrial release and we'd ask to continue him on
3 release. There was no weapons restriction. We would ask to
4 modify to add a weapons restriction at this time.

5 The defendant voluntarily, actually, during this time
6 period, had friends holding his weapons for him. We'd just ask
7 that we make that -- that we formalize that within the Court
8 that there be a weapons restriction added to the terms of his
9 release until sentencing.

10 THE COURT: Mr. Carrico?

11 MR. CARRICO: Your Honor, I don't believe I have a
12 legal objection. The Court has accepted his guilty plea and I
13 believe under the statute he would be prohibited from having a
14 firearm at this time so, I'll direct him to dispose of those
15 weapons as soon as possible, according to whatever directions
16 Pretrial asks him.

17 THE COURT: Okay. And I'll agree to that -- impose
18 that additional condition upon supervised release at this point
19 in time, just to make it official for him.

20 MS. NEWMAN: Thank you, Your Honor.

21 THE COURT: Anything else we need to address?

22 MR. CARRICO: No, Your Honor.

23 THE COURT: Thank you. Then, with that, we'll be in
24 recess.

25 Mr. Underhill, good luck to you.

1 THE CLERK: All rise.

2 (Proceedings adjourned at 11:37 a.m.)

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* * *

6 I hereby certify that pursuant to Section 753, Title 28,

7 United States Code, the foregoing is a true and correct

8 transcript of the stenographically reported proceedings held in

9 the above-entitled matter.

10

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12 DATED: 7-29-2013

/s/ Heather K. Newman

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HEATHER K. NEWMAN

U.S. Court Reporter

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CCR 774

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